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08/21/07 *Angelica Zuniga*
Date Angelica Zuniga

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: 10/658,507

Inventors: Mark Reiley

Filed: September 09, 2003

Title: **FACET ARTHROPLASTY
DEVICES AND METHODS**

Confirmation No.: 1793

Examiner: ISABELLA, DAVID J

Group Art Unit: 3738

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

INFORMATION DISCLOSURE STATEMENT UNDER 37 CFR § 1.97 & § 1.98

Sir:

In accordance with 37 CFR § 1.97-1.98, applicants hereby submit an Information Disclosure Statement, including attached forms(s) PTO/SB/08. A copy of each reference is being submitted herewith, along with a concise explanation in English for those publications in a foreign language.

Applicants respectfully request that the listed information be considered by the Examiner and be made of record in the above-identified application. Applicants further request that the Examiner initial and return a copy of the attached form(s) PTO/SB/08 in accordance with MPEP §609.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and /or to prove that this information may not be enabling for the teachings purportedly offered.

This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, prior art or material to patentability as defined in 37 CFR §1.56.

08/24/2007 HLE333 00000002 504050 10658507

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FILING OF INFORMATION DISCLOSURE STATEMENT**37 CFR §1.97(b)**

This statement is being submitted under 37 CFR §1.97(b) because the IDS is being filed:

- ☐ 1). Within 3 months of the application filing date and is other than a continued prosecution application under § 1.53(d), or
- ☐ 2). Within 3 months of entry of a national stage as set forth in § 1.491, or
- ☐ 3). Before the mail date of a first Office Action on the merits, or
- ☐ 4). Before the mailing of a first Office Action after filing a request for continued examination under § 1.114.

**37 CFR § 1.97(c)**

This statement is being filed after the latest of:

- ☐ 1). Three months beyond the filing date of a national application, or
- ☐ 2). Three months beyond the date of entry of the national stage as set forth in § 1.491 in an international application, or
- ☒ 3). The mailing date of a first Office Action on the merits, but before the mailing date of the earlier of a final Office Action under § 1.113 or a Notice of Allowance under § 1.311, and then either:
 - ☒ A). A fee of \$180.00 as set forth in § 1.17(p) is authorized below, enclosed, or included with the payment of other papers filed together with this statement. or
 - ☐ B). A certification as specified in § 1.97(e) is provided below; thus no fee is required.

**37 CFR § 1.97(d)**

This statement is being filed after the mailing date of the earlier of a Final Office action or a Notice of Allowance under § 1.311, but before payment of the issue fee, and then:

A). A fee of \$180.00 as set forth in § 1.17(p) is authorized below, enclosed, or payment is included with other papers filed together with this statement

--AND--

B). A certification as specified in § 1.97(e) is included below.

CONTENT OF INFORMATION DISCLOSURE STATEMENT UNDER
37 CFR § 1.98

**37 CFR §1.98 (a)(2)(ii), U.S. patents or patent application publication(s) cited**

- ☒ 1). Since not requested by the Office, U.S. patents and U.S. patent application publications are not included.
- ☐ 2). At the request of the Office, a copy of the following U.S. patent or patent application publication is attached:

**37 CFR §1.98 (a)(2)(iii) and (d), Pending unpublished U.S. applications cited**

☒ 1). A copy of each application specification including the claim(s), and any drawing of the application, or that portion of the application that caused it to be listed, including any claims directed to that portion, is attached.

- ☐ 2). A copy of each application specification is not submitted because the specification was previously submitted in the IDS of the following, earlier filed application relied on for an earlier effective filing date:

**37 CFR §1.98 (a)(2)(iii) and (d), English language publication (other than U.S. patents, patent applications, or pending unpublished applications) cited**

- ☒ 1). A legible copy of each publication or that portion which caused it to be listed is attached.
- ☐ 2). A copy of each publication or that portion which caused it to be listed is not submitted because the publication was previously submitted in the IDS of the following, earlier filed application relied on for an earlier effective filing date:

- ☒ 37 CFR §1.98 (a)(2)(i) and (d), Foreign patent(s) in English cited
- ☒ 1). A legible copy of each foreign patent is attached.
- ☐ 2). A copy of each foreign patent is not submitted because the publication was previously submitted in the IDS of the following, earlier filed application relied on for an earlier effective filing date:
- ☒ 37 CFR §1.98 (a)(2)(i), (a)(3)(i-ii) and MPEP 609(B), Foreign patent(s) or other foreign documents not in English cited. Either:
- ☒ 1). A legible copy of each foreign patent, each publication or that portion which caused it to be listed, is attached --AND--
- ☐ 2a). A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56 (c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language is provided herewith: --OR--
- ☒ 2b). A copy of a written, English-language translation or portion thereof is readily available and attached for JP59010807A, JP10082605A, WO 96/00049, WO 01/06939, and WO 01/28442A1. --OR--
- ☒ 2c). An English language copy of a foreign search report is submitted for FR 2749155A and FR2726459A. --OR--
- ☐ 3). A copy of each foreign patent is not submitted because the publication was previously submitted in the IDS of the following, earlier filed application relied on for an earlier effective filing date:

Should the Examiner believe that a complete translation of any of the above listed publications is necessary to understand its disclosure, the applicant(s) will endeavor to provide such translations at the Examiner's request.

STATEMENT UNDER 37 CFR § 1.97(e)

- ☐ Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement.
- ☐ No item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

FEE AUTHORIZATION

- ☒ The Commissioner is hereby authorized to charge the above-referenced fees of \$180.00 and charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-4050.

Respectfully Submitted,

Dated: 8-20-07
Shay Law Group
2755 Campus Drive, Suite 210
San Mateo, CA 94403
(650) 212-1700
Customer No. 66854

By: Douglas C. Limbach
Douglas Limbach Reg. # 35249



PTO/SB/21 (04-07)

Approved for use through 09/30/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

15

Application Number

10/658,507

Filing Date

September 09, 2003

First Named Inventor

Mark Reiley

Art Unit

3738

Examiner Name

ISABELLA, DAVID J

Attorney Docket Number

10002-701.411

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☒

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

☐

Licensing-related Papers

☐

Petition

☐Petition to Convert to a
Provisional Application☐

Power of Attorney, Revocation

☐

Change of Correspondence Address

☐

Terminal Disclaimer

☐

Request for Refund

☐

CD, Number of CD(s) _____

☐ Landscape Table on CD☐

After Allowance Communication to TC

☐Appeal Communication to Board
of Appeals and Interferences☐Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☒Other Enclosure(s) (please identify
below):

Postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Shay Law Group LLP

Signature

Douglas C. Limbach

Printed name

Douglas Limbach

Date

8-20-07

Reg. No.

35,249

CERTIFICATE OF TRANSMISSION/MAILING

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Angelica Zuniga

Typed or printed name

Angelica Zuniga

Date

08/21/07

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Substitute for form 1449/PTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Complete if Known

Application Number	10/658,507
Filing Date	September 09, 2003
First Named Inventor	Mark Reiley
Art Unit	3738
Examiner Name	ISABELLA, DAVID J
Attorney Docket Number	10002-701.411

Sheet 1 of 11

U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	4	US- 3,596,656	8/3/1971	Kaute	
	7	US- 4,040,130	8/9/1977	Laure	
	8	US- 4,123,848	11/7/1978	Emmerich et al.	
	9	US- 4,156,296	5/29/1979	Johnson et al.	
	10	US- 4,210,317	7/1/1980	Spann et al.	
	11	US- 4,231,121	11/4/1980	Lewis	
	13	US- 4,349,921	9/21/1982	Kuntz	
	14	US- 4,394,370	7/19/1983	Jefferies	
	15	US- 4,472,840	9/25/1984	Jefferies	
	16	US- 4,611,581	9/16/1986	Steffee	
	17	US- 4,693,722	9/15/1987	Wall	
	21	US- 4,778,472	10/18/1988	Homsy et al.	
	22	US- 4,805,602	2/21/1989	Puno et al.	
	26	US- 4,917,701	4/17/1990	Morgan	
	28	US- 4,955,916	9/11/1990	Carignan et al.	
	30	US- 5,000,165	3/19/1991	Watanabe	
	31	US- 5,015,255	5/14/1991	Kuslich	
	32	US- 5,019,081	5/28/1991	Watanabe	
	34	US- 5,062,845	11/5/1991	Kuslich et al.	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T ⁶
		Country Code ³ Number ⁴ Kind Code ⁵ (if known)				
	290	FR 2726459	5/10/1996	Desauge Jean Pierre		
	291	FR 2749155	12/5/1997	Albert P. Alby		
	374	JP 10082605 A	3/31/1998	Takeuchi et al.		
	373	JP 59010807 A	1/1/1984	Ando, Hisao		
	305	WO 01/06939 A1	2/1/2001	Eurosurgical		
	306	WO 01/15638 A1	3/8/2001	Cauthen Research Group, Inc		

Examiner
SignatureDate
Considered

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Sheet **2**of **11****Complete if Known**

Application Number	10/658,507
Filing Date	September 09, 2003
First Named Inventor	Mark Reiley
Art Unit	3738
Examiner Name	ISABELLA, DAVID J
Attorney Docket Number	10002-701.411

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		Number-Kind Code ² (if known)			
	38	US- 5,108,399	4/28/1992	Eitenmuller et al.	
	39	US- 5,129,900	7/14/1992	Asher et al.	
	44	US- 5,284,655	2/8/1994	Bogdanský et al.	
	45	US- 5,300,073	4/5/1994	Ray et al.	
	49	US- 5,312,409	5/17/1994	McLaughlin et al.	
	51	US- 5,314,476	5/24/1994	Prewett et al.	
	52	US- 5,314,486	5/24/1994	Zang et al.	
	375	US- 5,314,492	5/24/1994	Hamilton et al;	
	55	US- 5,350,380	9/27/1994	Goble et al.	
	58	US- 5,405,390	4/11/1995	O'Leary et al.	
	62	US- 5,445,639	8/29/1995	Kuslich et al.	
	63	US- 5,458,641	10/17/1995	Ramirez Jimenez	
	357	US- 5,474,551	12/12/1995	Finn et al.	
	66	US- 5,474,555	12/12/1995	Puno et al.	
	67	US- 5,491,882	2/20/1996	Walston et al.	
	361	US- 5,501,684	3/26/1996	Schlapfer et al.	
	68	US- 5,507,823	4/16/1996	Walston et al.	
	69	US- 5,510,396	4/23/1996	Prewett et al.	
	77	US- 5,569,247	10/29/1996	Morrison	

FOREIGN PATENT DOCUMENTS

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		Country Code ³ Number ⁴ Kind Code ⁵ (if known)				
	307	WO 01/28442 A1	4/26/2001	Spine Next		
	296	WO 96/00049 A1	1/4/1996	Fairant		

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Sheet 3

of 11

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Application Number	10/658,507
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		Number-Kind Code ² (if known)			
	80	US- 5,571,191	11/5/1996	Fitz	
	81	US- 5,575,792	11/19/1996	Errico et al.	
	82	US- 5,577,995	11/26/1996	Walker et al.	
	83	US- 5,587,695	12/24/1996	Warmerdam	
	84	US- 5,603,713	2/18/1997	Aust et al.	
	85	US- 5,609,641	3/11/1997	Johnson et al.	
	86	US- 5,643,263	7/1/1997	Simonson	
	88	US- 5,649,930	7/22/1997	Kertzner	
	90	US- 5,658,338	8/19/1997	Tullos et al.	
	91	US- 5,662,651	9/2/1997	Tornier et al.	
	96	US- 5,683,391	11/4/1997	Boyd	
	97	US- 5,683,392	11/4/1997	Richelsoph et al.	
	100	US- 5,688,274	11/18/1997	Errico et al.	
	101	US- 5,690,630	11/25/1997	Errico et al.	
	104	US- 5,704,941	1/6/1998	Jacobson et al.	
	106	US- 5,725,527	3/10/1998	Biedermann et al.	
	107	US- 5,738,585	4/14/1998	Hoyt, III et al.	
	108	US- 5,741,255	4/21/1998	Krag et al.	
	109	US- 5,741,261	4/21/1998	Moskovitz et al.	

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		Number-Kind Code ² (if known)			
	110	US- 5,766,253	6/16/1998	Brosnahan, III	
	359	US- 5,776,135	7/7/1998	Errico et al.	
	111	US- 5,782,833	7/21/1998	Haider	
	112	US- 5,797,911	8/25/1998	Sherman et al.	
	113	US- 5,800,433	9/1/1998	Benzel et al.	
	116	US- 5,827,289	10/27/1998	Reiley et al.	
	119	US- 5,863,293	1/26/1999	Richelsoph	
	121	US- 5,866,113	2/2/1999	Hoensbroek et al.	
	123	US- 5,879,350	3/9/1999	Sherman et al.	
	124	US- 5,879,396	3/9/1999	Walston et al.	
	125	US- 5,885,285	3/23/1999	Simonson	
	127	US- 5,891,145	4/6/1999	Morrison et al.	
	129	US- 5,947,893	9/7/1999	Agrawal et al.	
	130	US- 5,964,760	10/12/1999	Richelsoph	
	132	US- 6,010,503	1/4/2000	Richelsoph et al.	
	134	US- 6,019,759	2/1/2000	Rogozinski	
	136	US- 6,022,350	2/8/2000	Ganem	
	358	US- 6,050,997	4/18/2000	Mullane, Thomas	
	143	US- 6,074,391	6/13/2000	Metz-Stavenhagen et al.	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T ⁶
		Country Code ³ *Number ⁴ *Kind Code ⁵ (if known)				

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Application Number	10/658,507
Filing Date	September 09, 2003
First Named Inventor	Mark Reiley
Art Unit	3738
Examiner Name	ISABELLA, DAVID J
Attorney Docket Number	10002-701.411

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of

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U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	144	US- 6,077,262	6/20/2000	Schlöpfer et al.	
	146	US- 6,086,590	7/11/2000	Margulies et al.	
	147	US- 6,090,111	7/18/2000	Nichols	
	150	US- 6,132,430	10/17/2000	Wagner	
	151	US- 6,132,464	10/17/2000	Martin	
	153	US- 6,165,177	12/26/2000	Wilson et al.	
	201	US- 6,949,123	9/27/2005	Reiley	
	154	US- 6,190,388 B1	2/20/2001	Michelson et al.	
	157	US- 6,200,322 B1	3/13/2001	Branch et al.	
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	253	US- 2005/0119748 A1	6/2/2005	Reiley et al.	

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Sheet 7 of 11**Complete if Known**

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		Number-Kind Code ² (if known)			
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	257	US- 2005/0143818 A1	6/30/2005	Yuan et al.	
	258	US- 2005/0149190 A1	7/7/2005	Reiley	
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	263	US- 2005/0235508 A1	10/27/2005	Augustino et al.	
	264	US- 2005/0240264 A1	10/27/2005	Tokish, JR. et al.	
	265	US- 2005/0240265 A1	10/27/2005	Kuiper et al.	
	266	US- 2005/0240266 A1	10/27/2005	Kuiper et al.	
	267	US- 2005/0251256 A1	11/10/2005	Reiley	
	268	US- 2005/0261770 A1	11/24/2005	Kuiper et al.	
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	271	US- 2005/0283238 A1	12/22/2005	Reiley	
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	274	US- 2006/0009849 A1	1/12/2006	Reiley	
	276	US- 2006/0041311 A1	2/23/2006	McLeer	
	277	US- 2006/0052785 A1	3/9/2006	Augustino et al.	

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Sheet 8 of 11

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	278	US- 2006/0058791 A1	3/16/2006	Broman et al.	
	279	US- 2006/0079895 A1	4/13/2006	McLeer	
	281	US- 2006/0085072 A1	4/20/2006	Funk et al.	
	282	US- 2006/0085075 A1	4/20/2006	McLeer	
	283	US- 2006/0100707 A1	5/11/2006	Stinson et al.	
	284	US- 2006/0100709 A1	5/11/2006	Reiley et al.	
	370	US- 2006/0149375 A1	7/6/2006	Yuan et al.	
	285	US- 2006-0184180 A1	8/17/2006	Augustino et al.	
	365	US- 2006/0265070 A1	11/23/2006	Stinson et al.	
	368	US- 2007/0079517 A1	4/12/2007	Augustino et al.	
	372	US- 2007/0088358	4/19/2007	Yuan et al.	
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		Art Unit	3738
		Examiner Name	ISABELLA, DAVID J
Sheet 9	of 11	Attorney Docket Number	10002-701.411

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	371	YUAN et al; U.S. Pat. App. # 11/636,252 entitled "Prostheses, Tools, and Methods for Replacement of Natural Facet Joints with Artificial Facet Joint Surfaces" filed 12/08/2006.	
	367	BROMAN et al; U.S. Pat. App. #11/642,417, entitled "Arthroplasty revision system and method" filed 12/20/2006.	
	369	OHRT et al; U. S. Pat. App. # 11/724,927 entitled "Facet and disc arthroplasty system and method " filed 3/15/2007.	
	366	KUIPER et al; U.S. Pat. App. # 11/635,853, entitled "Crossbar Spinal Prosthesis Having a Modular Design and Related Implantation Methods", filed 12/08/2006.	
	376	REILEY et al; U.S. Pat. App. # 11/746,027 entitled "Facet Arthroplasty Devices and Methods," filed 5/08/2007.	
	377	REILEY et al; U.S. Pat. App. # 11/577,872 entitled "Facet Joint Prosthesis" filed 4/24/2007.	
	378	REILEY et al; U.S. Pat. App. # 11/577,923 entitled "Facet Joint Prostheses" filed 4/25/2007.	
	379	KUIPER et al; U.S. Pat. App. # 11/577,964 entitled "Crossbar Spinal Prosthesis Having a Modular Design and Systems for Treating Spinal Pathologies," filed 4/25/2007.	
	380	KUIPER et al; U.S. Pat. App. # 11/577,967 entitled "Crossbar Spinal Prosthesis having a Modular Design and Systems for Treating Spinal Pathologies," filed 4/25/2007.	
	381	REILEY, MARK; U.S. Pat. App. # 11/750,981 entitled "Facet Arthroplasty Device and Methods," filed 5/18/2007.	

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